

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Raj Kumar Upadhyay v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.199/1995
under Article 226 of the Constitution
of India.

Date of Order :: 1st June, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Mehta, for the petitioner.
Mr. B.R.Mehta, for the respondent.

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BY THE COURT :

By this petition for writ a challenge is given by the petitioner to the order dated 15.11.1994 passed by the Registrar, Cooperative Societies affirming the order dated 10.5.1993 passed by the then Chairman of respondent Sirohi District Commercial Cooperative Bank Ltd. dismissing him from service.

The respondent No.3 is a Cooperative Bank having bye-laws certified as per Section 8 of the Rajasthan Cooperative Societies Act, 1965 (hereinafter referred to as "the Act of 1965"). The Registrar, Cooperative Societies, while exercising powers under

Rule 41 of the Rajasthan Cooperative Societies Rules, 1965 approved "the Sirohi District Commercial Cooperative Bank Ltd. Employees Service Rules, 1987 (hereinafter referred to as "the Rules of 1987") to regulate general conditions relating to appointments of staff and other service conditions relating to employees of the bank.

Clause 36(xiv) of the certified bye-laws while empowering the Board of Directors of the Bank to take disciplinary action against its employees makes it necessary to have prior approval of the Registrar, Cooperative Societies for taking disciplinary action against the Chief Executive Officer.

The Rules of 1987 with other general service conditions relating to employees of the Bank also provides detailed procedure for taking disciplinary action. The term "disciplinary authority", as interpreted under the Rules of 1987 means "for the purpose of those rules unless specifically provided in the bye-laws of the society, the Chief Executive of the institution will be the disciplinary authority for all categories of employees except those on deputation. For the employees taken on deputation (including the Chief Executive, if so) the powers of disciplinary action will be vested in the Zonal Joint Registrar, Cooperative Societies and the Registrar, Cooperative Societies as per existing orders of the

Government. Board of Directors of the Cooperative Society will be the disciplinary authority for a Chief Executive who is society's own staff." The appellate authority as prescribed under the Rules of 1987 to examine validity, propriety and correctness of an order passed by the disciplinary authority is Registrar, Cooperative Societies Rajasthan.

The petitioner entered in the services of the respondent Bank being appointed as Secretary on 6.12.1977. The post of Secretary was subsequently designated as Chief Executive Officer/Managing Director. One Shri Prakash Raj Modi was elected as Chairman of the Bank and the petitioner, as averred in petition for writ, objected his working style and also made a complaint to Reserve Bank of India pointing out certain illegalities committed by the Chairman while sanctioning loan and other advances. According to the petitioner the Chairman for the reasons above was keeping enmity with him and, therefore, subjected him to victimisation by various means.

To substantiate the allegation above it is asserted by counsel for the petitioner that at first instance the Board of Directors of the Bank on 17.10.1991 resolved to retire the petitioner from service, however, by an interim order dated 24.10.1991 passed by this Court in SBCivil writ Petition No.5468/1991 restrained the bank to act upon the

resolution referred above. Being failed to get the petitioner oust from service by way of premature retirement the petitioner was ordered to be placed under suspension by an order dated 26.10.1991. Validity of that too was challenged by the petitioner by way of filing a writ petition before this Court. The respondents also served a charge sheet dated 17.10.1991 upon the petitioner and then an another charge sheet dated 23.10.1991 was also served upon him. A third charge sheet dated 23.3.1992 was served upon the petitioner on 4.4.1992 and by a resolution dated 26.4.1992 an inquiry committee was constituted to inquire into the allegations referred in all the three charge sheets. The inquiry committee so constituted submitted its report on 30.4.1992 and that was placed before the Board of Directors on 24.4.1992. The Board of Directors did not accept the report of the inquiry and resolved to get the charges inquired afresh by the Chairman himself. On 23.12.1992 a fourth charge sheet was also issued to the petitioner.

The Chairman while acting as inquiry officer by a communication dated 23.12.1992 instructed Sarva Shri Shivalal Nagar and Motilal Barot to report before him on 6.1.1992 as witness in the inquiry relating to the petitioner. The notice referred above was also containing a note relating to the petitioner that reads as follows:-

“श्री राजकुमार उपाध्याय, निलम्बित प्रबन्ध संचालक, को भेजकर लेख है कि आप उक्त दिनांक एवं समय को अपने बचाव हेतु उपस्थित हों। चूंकि आप बीमारी का प्रमाण पत्र देकर जाँच को अनावश्यक रूप से लम्बी कर रहे हैं और इसमें टालमटोल कर रहे हैं। अतः यदि आप बीमारी के कारण समय पर उपस्थित नहीं हो जाते हैं तो मेडिकल बोर्ड का प्रमाण-पत्र प्रस्तुत करने का कष्ट करे। अन्यथा आपकी अनुपस्थिति में एक तरफा जाँच की जाने हेतु निम्न हस्ताक्षरकर्ता स्वतन्त्र रहेंगे।”

The petitioner by letter dated 4.1.1993 conveyed his inability to appear before the inquiry officer on 6.1.1993 as he was to attend court proceedings at Mount Abu. By a letter dated 5.1.1993 an information was given to the petitioner about deferment of the inquiry proceedings for 20.1.1993, however, no place of holding inquiry and time of inquiry was given in the notice concerned. Despite the fact that the inquiry proceedings were adjourned on 6.1.1993, as it reveals from notice dated 5.1.1993, the inquiry officer conducted the inquiry proceedings and recorded statements of five persons viz. Sarva Shri Raghuvir Singh, Suresh Chandra, Om Prakash Agrawal, Shivalal Nagar and Vishnu Narain Vyas. A report of the inquiry then was submitted on 21.1.1993 and a copy whereof was supplied to the petitioner. The findings given by the inquiry officer with regard to all the allegations referred in four charge sheets are summarised below:-

1. Charge Sheet dated 17.10.1991:

Charges No.1 and 2 – No inquiry was conducted as for the same subject a case was pending before the competent court;

Charge No.3 – The petitioner was found guilty on basis of statements of Shri Motilal and Shri Vishnu Narain;

Charge No.4 – Found proved on basis of record.

Charge No.5 – Found proved on basis of document Ex.P/48;

Charge No.6 – Guilty proved on basis of documents Ex.P/49 and Ex.P/50;

Charge No.7 – Found proved.

2. Charge sheet dated 23.10.1991:

No inquiry was conducted due to pendency of a case before competent court pertaining to same subject.

3. Charge sheet dated 23.3.1992:

Charge No.1 – Not inquired as for the same subject a case was pending before a competent court;

Charge No.2 – Proved on basis of Ex.P/52.

4. Charge sheet dated 23.12.1992:

Charge No.1 proved on basis of documents Ex.P/53 to Ex.P/58.

The inquiry officer on basis of the findings above held the petitioner guilty for misappropriation of funds, breach of trust and lack of administrative capability.

The petitioner submitted a detailed representation making necessary comments relating to findings given by the inquiry officer with an allegation for violation of principles of natural justice in holding disciplinary proceedings. The petitioner specifically pointed out that the entire disciplinary action was taken just to victimise him and while doing so no adequate opportunity to defend himself was given. The petitioner asserted that the Chairman of the Bank was appointed as inquiry officer under a resolution dated 24.11.1992 and the same was circulated on 22.12.1992. The inquiry officer at first instance fixed the inquiry proceedings on 6.1.1993 but that was adjourned at the request of the petitioner for 20.1.1993, despite that the inquiry officer conducted the inquiry proceedings on 6.1.1993 by recording statements of five persons. It was further pointed out that on 6.1.1993 only two persons viz. Shivalal Nagar and Vishnu Narain Vyas were called to get as prosecution witness, however, the statements of three other persons were also recorded on same day. The notice for fixing of inquiry proceedings on 20.1.1993 was given, but that was also not containing

the time and place of inquiry proceedings resulting failure of the petitioner to attend the inquiry proceedings. Beside above, it is stressed by counsel for the petitioner that the inquiry officer found the petitioner guilty for the charges alleged on basis of various documents but no reference of those documents was ever given to the petitioner.

The Board of Directors after considering record of the inquiry in its meeting dated 29.5.1993 accepted the findings given by the inquiry officer and resolved to dismiss the petitioner from service. Accordingly, an order dated 10.5.1993 was passed "dismissing the petitioner from service".

By way of filing an appeal before the Registrar, Cooperative Societies, Jaipur, the petitioner assailed validity, propriety and correctness of the order of dismissal dated 10.5.1993.

The petitioner before the appellate authority while giving challenge to the findings given by the inquiry officer as well as the Board of Directors reiterated the allegation regarding violation of principles of natural justice. The petitioner also emphasised that imposition of penalty under the order dated 10.5.1993 was beyond the competence of the Board of Directors as per clause 36(xiv) of the certified bye-laws of the Bank for the reason that no

disciplinary action against him could have been taken without having prior approval by the Registrar, Cooperative Societies.

The Registrar, Cooperative Societies upheld the findings given by the disciplinary authority by stating that the allegations on basis of record were found proved and no argument/evidence was extended by the petitioner in rebuttal.

With regard to the contention of the petitioner relating to competence of Board of Directors to take disciplinary action without having prior approval from the Registrar, Cooperative Societies, the appellate authority held that the same was not required after application of the Rules of 1987 and even if it was required then too no illegality was committed as the Cooperative Department by a communication dated 14.7.1993 informed the Bank that no confirmation is required in view of the service rules. The appeal was accordingly rejected by an order dated 15.11.1994, hence this petition for writ to challenge the order passed by the Registrar as well as the order passed by the disciplinary authority is preferred.

While giving challenge to the orders impugned the contentions of counsel for the petitioner are as follows:-

(1)The Registrar Cooperative Societies failed to appreciate that in accordance with clause 36(xiv) of the certified bye-laws, no disciplinary action could have been initiated against the petitioner without seeking prior approval from the Registrar, Cooperative Societies;

(2)The order passed by the Registrar, Cooperative Societies affirming the order of the disciplinary authority is non speaking and unreasoned order;

(3)The sequence of facts proves extraneous consideration in taking disciplinary action against the petitioner; and

(4)The order passed by the disciplinary authority is illegal being based on an inquiry that was conducted in violation of principles of natural justice and also in violation of the provisions of the Rules of 1987.

A reply to the writ petition has been filed on behalf of the respondents in general defending the orders impugned. According to the respondents the petitioner was involved in serious misconduct and those were proved after holding a fair inquiry, thus, no interference of this Court is warranted.

Heard counsel for the parties.

Before coming to merits of the case, learned counsel for the respondents urged that no order for reinstatement of the petitioner can now be passed even in the event of acceptance of this petition for writ in view of dismissal of the writ petition preferred by the petitioner challenging his compulsory retirement from service. I do not find any substance in the contention so raised as the writ petition aforesaid was dismissed by this Court in light of the subsequent order of dismissal and as a matter of fact no order of compulsory retirement was ever passed by the respondents as the petitioner assailed validity of the resolution for placing the petitioner under compulsory retirement. The operation of the aforesaid resolution was stayed by this Court.

The first contention of counsel for the petitioner is that the entire disciplinary action taken against the petitioner was beyond the competence of Board of Directors as there was no prior approval of the Registrar, Cooperative Societies as required under clause 36(xiv) of the certified bye-laws. Clause 36(xiv) of the certified bye-laws provides that "prior approval of the Registrar shall be essential for taking disciplinary action against the Chief Executive Officer". The Registrar, Cooperative Societies while dealing with the same contention held that after application of the Rules of 1987 there was no need for having any approval of the Registrar for taking

disciplinary action against the Chief Executive Officer.

I have thoroughly examined the service rules. The service rules certainly empowers the Board of Directors to act as disciplinary authority, however, merely on that count it cannot be said that the provisions of the certified bye-laws stood superseded, thus, in view of clause 36(xiv) the prior approval before taking disciplinary action was required. In the instant matter admittedly no such approval was taken by the respondent Bank. However, in the matter in hand the petitioner after receiving the charge sheets never approached the Registrar pointing out the violation of provisions of clause 36(xiv) of the certified bye-laws. On the contrary, the petitioner was intending to participate in disciplinary proceedings. The petitioner also approached this Court giving challenge to the resolution of the Board of Directors placing him under compulsory retirement, placing him under suspension and also against an order withdrawing his administrative and financial powers, but he nowhere raised the question about competence of the Board of Directors for initiating disciplinary action without seeking prior approval of the Registrar. In these circumstances I am of the opinion that though the bye-laws provides for seeking a prior approval to take disciplinary action against the Chief Executive Officer but in peculiar facts and circumstances of the

case the violation of provision above shall not make the disciplinary action illegal.

The next contention of counsel for the petitioner is that the Registrar, Cooperative Societies while affirming the order passed by the disciplinary authority has not given a speaking and reasoned order. By the order dated 10.5.1993 the petitioner was dismissed as a consequent to the resolution of the Board of Directors dated 29.5.1993. The petitioner being aggrieved by the same submitted an appeal to challenge the order aforesaid on various grounds. The appellate authority disposed of all the contentions raised by the petitioner merely by saying that all the allegations against the petitioner stood proved on basis of record. It is well settled that the appellate authority while examining an order of disciplinary authority is required to deal with all the contentions raised by the delinquent employee to challenge the order imposing penalty upon him. The appellate authority in the instant matter as a matter of fact has ignored all the contentions raised by the petitioner, thus, I am in agreement with learned counsel for the petitioner that the order passed by the appellate authority is unreasoned and non-speaking.

The next contention of counsel for the petitioner alleging extraneous consideration on part of the Chairman of the Bank cannot be considered as

Shri Prakash Raj Modi, against whom the allegations of malafides are alleged, is not party to the proceedings. Unfortunately he is no more alive.

Much emphasis is given by counsel for the petitioner with regard to the manner in which the inquiry was conducted by the inquiry officer. It is asserted by counsel for the petitioner that no opportunity was given to the petitioner to defend himself. From the facts admitted between the parties it reveals that for three charge sheets dated 17.10.1991, 23.10.1991 and 23.3.1992 at first instance an inquiry committee was constituted and that also submitted its report to the Board of Directors. The Board of Directors did not accept report of the inquiry committee and decided to get the matter inquired afresh by appointing Chairman of the Bank as inquiry officer. The Chairman was authorised to inquire into the allegations levelled under the charge sheets dated 17.10.1991, 23.10.1991 and 23.3.1992 only, however, the inquiry officer also conducted the inquiry with regard to the charge sheet dated 23.12.1992 for that he was not at all authorised by the Board of Directors.

From the facts it is also established that after publication of the minutes of the meeting of the Board of Directors on 22.12.1992 the first date of inquiry proceedings was 6.1.1993 and at the request of

the petitioner the inquiry proceedings were adjourned for 20.1.1993. Despite such adjournment the inquiry officer recorded statements of five witnesses. On 20.1.1993 it appears that the inquiry officer examined certain documents and immediately thereafter submitted a report of inquiry to the Board of Directors. This clearly shows that no opportunity was given to the petitioner to defend himself. It is not only in violation of the general principles of natural justice but is also in violation of the procedure prescribed to conduct an inquiry relating to major misconduct under the Rules of 1987. According to the procedure prescribed under the Rules of 1987 except for the reasons to be recorded in writing the officer holding the inquiry shall permit the delinquent employee to produce witness in his defence and cross examine any witness whose evidence led on either side. Employees plea is also required to be recorded. In present matter no opportunity was given to the petitioner to cross examine the prosecution witness and to produce any evidence in defence, his plea was also not recorded, thus, it can be safely said that no adequate opportunity was accorded to the petitioner to defend himself.

Beside the above, it is pertinent to note that the inquiry officer has taken into consideration the evidence that was adduced before earlier inquiry committee that's inquiry report was not accepted by

the Board of Directors. As a matter of fact the inquiry officer was required to hold the entire inquiry proceedings afresh and, therefore, the consideration of evidence recorded earlier was erroneous.

I also found substance in the contention of counsel for the petitioner that not only copies of the documents on which the inquiry officer relied were not supplied to the petitioner but the delinquent employee was also never made acquainted with regard to those documents. It is well settled that whatever material on which the prosecution relies should be disclosed to the delinquent employee. In view of whatever discussed above, I am satisfied that the entire disciplinary proceedings were conducted against the petitioner in violation of the Rules of 1987 and also in violation of principles of natural justice. As such, the order impugned is illegal.

The writ petition, therefore, is allowed. The order passed by the disciplinary authority dated 10.5.1993 and the appellate authority 15.11.1994 are hereby quashed. The petitioner is entitled to be reinstated in service with all consequential benefits.

(GOVIND MATHUR),J.

Kkm/ps.